

Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman
Commissioners Downey, Knox, and Swanson

From: Jennie Eddy, Commission Counsel
Bill Marland, Accounting Specialist
Steven Benito Russo, Enforcement Chief

Subject: **Adoption of Amendments to Regulation 18991:**
Population Data Source for Audits of Campaign Reports and Statements
of Local Candidates and Their Controlled Committees

Date: January 2, 2002

I. BACKGROUND

Government Code section 90000 requires the Franchise Tax Board (the “FTB”) to audit local candidates and their controlled committees. Under Government Code section 90001, subdivision (i)(1), local candidates and their controlled committees are to be selected for audit according to the method of selection specified by the regulations of the Fair Political Practices Commission.¹

Commission regulation 18991 prescribes a method for selecting local candidates and their controlled committees for audit by the FTB. Under subdivision (c) of regulation 18991, all local candidates and their controlled committees, in each of 20 local jurisdictions, are to be audited over a two-year period. The 20 jurisdictions are to be selected according to a procedure set forth in subdivisions (d) through (g), in which 40% of the jurisdictions selected must be counties and 40% of the jurisdictions selected must be cities.

To determine which of the many county and city jurisdictions will be selected for audit, subdivisions (d) and (e) require that all of the counties and cities in California be grouped by population, and that a specified proportion of the jurisdictions selected for audit be taken from each of the population groups.

Subdivision (d) requires that counties be divided into three groups with: 15% of the counties being selected from a group of counties with a population of 700,000 or more; 15% of the counties being selected from a group of counties with a population of at least 150,000, but less than 700,000; and 10% of the counties being selected from a group of counties with a population of less than 150,000. Subdivision (e) requires that cities be divided into three groups with: 15% of the cities being selected from a group of cities

¹ The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

with a population of 100,000 or more; 15% of the cities being selected from a group of cities with a population of at least 25,000, but less than 100,000; and 10% of the cities being selected from a group of cities with a population of less than 25,000.

Through the use of this audit selection process there is a disparity in the number of counties and cities that fall into each population group. This then produces a pronounced difference in the odds of any particular county or city being selected for audit, depending upon which population group the county or city is placed in. For example, in the most recent audit selection, small cities had a 2 in 226, or a 1% chance of being one of the 20 jurisdictions selected for audit, while large cities had a 3 in 56, or a 5% chance of being selected. This difference in the likelihood of any particular jurisdiction being selected translates into a corresponding difference in the likelihood of any particular candidate and committee being selected for audit.

Under regulation 18991, as it now exists, the population information that is used to determine what population group a county or city belongs in for the audit selection process is “the most recent decennial federal census.” However, for cities that have been incorporated since the last decennial federal census, regulation 18991, subdivision (e) calls for the use of “other reliable data” to determine population. In those situations, the Fair Political Practices Commission has relied upon an annual report prepared by the Demographic Research Unit of the Department of Finance to determine the population of newly incorporated cities.

II. THE PERCEIVED PROBLEM

The use of the federal decennial census data for cities and counties incorporated prior to the last decennial census, as mandated by regulation 18991, creates perceived inequities in the audit selection process. Under the current practice population data that may be up to ten years out of date is being used to determine the audit groupings for established cities, while current data is being used to determine the audit groupings for newly incorporated cities. This practice creates an inequitable and arguably unfair probability of audit selection.

Established cities and counties remain in the same population group throughout the census decade, regardless of fluctuating and sometimes significant population changes that would result in the city or county being placed in a new population grouping for audit selection purposes if current population data were being utilized. As such, established cities and counties can face a higher or lower probability of audit selection, because of outdated population data, than would be the case if more current data were used, as such current data would reveal that they belong in different population groupings. During the last decade, various cities were incorporated in the State of California. The probability of these newly incorporated cities being selected for audit fluctuated in response to the population of the city, while the audit pool for established cities was determined by outdated population data. As an example, during the ten-year period of 1990 through 2000, twenty-one small cities increased to the medium city threshold, yet these cities remained in the small city grouping, and continued to enjoy the 1% likelihood of audit selection.

III. THE PROPOSED SOLUTION

To address the problem described above, staff is proposing that regulation 18991 be amended to require use of the annual population report of the Department of Finance to determine the grouping of counties and cities for the audit selection process, instead of the federal decennial census. This annual report, the E-1, is prepared each spring and contains current population data for all cities and counties in the State. The Population Research Unit of the Department of Finance was established under Government Code section 13073, to provide adequate demographic data to aid effective state and local planning and policymaking, as well as to serve all levels of government as the centralized source of demographic data. The resulting E-1 report is an accurate, reliable, timely and readily available source of population data for California cities and counties.

Staff's specific proposal, as presented in underline and strikeout format attached, is to delete the references to the decennial federal census in subdivisions (d) and (e), as well as the reference in subdivision (e) to the use of "other reliable data" for newly incorporated cities. These deletions, along with inserting the proposed additional language "population estimates published by the Department of Finance" in subdivisions (d) and (e), will serve to specify that audit pools are to be determined solely on population data furnished by the Department of Finance, rather than the decennial federal census.

These proposed amendments will ensure that in the future all local jurisdictions and not just newly incorporated cities, are selected for audit from groupings that are based on recent population surveys. In turn, the local jurisdiction audit selection process will be more equitable for all jurisdictions subject to audit.

At its December 13, 2002 meeting, the Commission engaged in a pre-notice discussion of this proposed regulatory change, and none of the Commissioners offered any objection to the proposal.

IV. STAFF RECOMMENDATION

Staff recommends that the Commission approve the proposed amendments to regulation 18991.